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January 24, 2005

Marlene R. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte, CC Docket Nos. 99-68, 01-92*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this will provide notice that on January 12, 2005, J.T. Ambrosi and John B. Messenger from PAETEC Communications, Inc., ("PAETEC"), met with Scott Bergmann, legal assistant to Commissioner Adelstein, and separately with Christopher Libertelli, legal assistant to Chairman Powell, to discuss PAETEC's position on the intercarrier compensation treatment of VNXX ISP traffic. On Friday, January 14, 2005, we met to discuss the same issues with Commissioner Martin and his legal assistant, Daniel Gonzalez, and separately with Jessica Rosenworcel, legal assistant to Commissioner Copps.

The points made by PAETEC at those meetings were consistent with previous *ex parte* filings made by PAETEC in these dockets, and with the attached summary. PAETEC urged the Commission to confirm that its previous orders governing intercarrier compensation apply equally to all ISP-bound traffic, whether or not the ISP server is physically located in the same geographic local calling area as the ILEC-served end user placing the call.

Respectfully submitted,

John B. Messenger
Vice President & Associate General Counsel
PAETEC Communications, Inc.

cc: Commissioner Martin, Scott Bergmann, Daniel Gonzalez, Christopher Libertelli, Jessica Rosenworcel, Matthew Brill

A Tale of Two Network Architectures

The VNXX phenomenon is chiefly the result of a fundamental difference in network architectures between a typical ILEC and a typical CLEC. The incumbent's legacy network consists of many local switches distributed throughout its serving territory, each located near the end users it serves. Although this architecture is clearly preferable, it is only economically feasible for a carrier with a monopoly customer base dense enough to support it. A facilities-based CLEC seeking to compete with the ILEC necessarily starts with a single switch designed to serve a territory (typically at least an entire LATA) much larger than the territory served by any single ILEC switch. This leaves the CLEC at a significant disadvantage in competing for the typical residential and business end user, because in almost all cases the facility connecting the end user premises with the CLEC's switch will be considerably longer, and therefore more costly, than the ILEC's loop.[1]

On the other hand, serving a large territory with a single switch does give the CLEC a natural advantage in competing for the business of Internet Service Providers (ISPs) that provide dial-up Internet access, since these ISPs prefer to place their server(s) in a single convenient location (typically a switch site) where they can receive local calls from any end user within that switch's coverage area. There is nothing improper or unfair about this advantage, or about the CLEC's receipt of reciprocal compensation for these calls. The CLEC's provision of VNXX service helps the ISPs realize cost savings they can pass on to their end users, without unfairly burdening the ILECs in any way.

No additional transport burden

ILECs have argued that the provision of VNXX service by a CLEC forces the ILEC to transport the call much farther than it otherwise would, and that this unfairly increases the ILEC's cost. That argument is false and misleading. In fact, the originating ILEC's transport burden is no greater for a VNXX call to a remote ISP server collocated at the CLEC switch than for a local call to a CLEC customer right next-door to the calling party. In both cases the ILEC delivers the call to the Point of Interconnection (POI) established by agreement between the ILEC and the CLEC. The ILEC's transport burden is determined entirely by the location of the POI, and not at all by the physical location of the CLEC customer.[2]

The only way in which a CLEC's provision of VNXX service increases the ILEC's burden is by increasing the volume of calls handled by the CLEC. Of course the ILEC would be better off maintaining its monopoly position and terminating 100% of the calls itself. But the fact that the ILEC is "burdened" by having to route more calls to its competitor does not in itself constitute cause for regulatory intervention.

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[1] The cost to the CLEC of these "long loop" facilities cannot be recovered through intercarrier compensation under today's rules, and cannot be directly recovered from the CLEC's customers due to competitive market forces.
[2] *See* PAETEC's October 7, 2004, *ex parte* filing in these dockets.

No compensation subsidy

Contrary to the suggestions of some ILECs,[3] a CLEC receives no windfall "subsidy" by collecting reciprocal compensation on a VNXX call as opposed to a "normal" local call. Reciprocal compensation is designed to recover only the additional cost to the receiving LEC of transporting and terminating a call. 47 U.S.C. § 252(d)(2). "Transporting" and "terminating" in this context mean routing the call from the POI to the receiving LEC's switch and switching the call there. Loop costs, *i.e.,* the cost of the connection from the CLEC's switch to the premises of the called party, are explicitly excluded from reciprocal compensation because they are not considered "additional costs" of carrying a local call.[4] The placement of an ISP server in or near the CLEC's switch site rather than physically in the originating local calling area certainly saves loop costs for the CLEC and therefore for the ISP and its dial-up customers. But this does not result in any over-recovery or unwarranted subsidy from reciprocal compensation payments, since the costs avoided by centralizing the server were not covered by the payments in the first place. Put differently, in the VNXX situation the CLEC is still performing all of the functions – transport and termination –which the reciprocal compensation is designed to cover. Since there is no subsidy from the receipt of reciprocal compensation on VNXX calls, *a fortiori* there is no subsidy from the receipt of the lower interim ISP-bound compensation established by the Commission's *ISP Remand Order.*[5]

No switched access avoidance

The ILECs contend that switched access charges should apply to VNXX service because the called party is outside the local calling area and the call is therefore interexchange in nature. While this argument might have some appeal where the CLEC customer is an end user with a fixed physical street address,[6] it makes no sense where the "called party" is merely an ISP server. The physical location of a collocated ISP server varies with the ISP's choice of LEC and the LEC's network architecture.[7] The calling end user does not know or care where the ISP's server is physically located, but only that the dial-up call is rated as local. If the ISP could not receive local calls at a particular server location the ISP would move its server (leaving its preferred LEC, if necessary) or else discontinue business. There never was, or would have been, a toll call to the ISP's remote server location. Therefore the "toll substitute" rationale under which actual foreign exchange service has traditionally been subject to access charges does not apply where ISP-bound calls are concerned.

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[3] *E.g.* Verizon's December 16, 2004, *ex parte* letter.

[4] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15,499 (1996) at ¶ 1057 and n.2532.

[5] To the extent that an unequal transport burden results from the placement of the POI closer to the CLEC's switch than the ILEC's, any resulting "subsidy" is a function of the POI location or the reciprocal compensation rate rather than the CLEC's provision of VNXX service. Because PAETEC's POIs are located much closer to the originating ILEC switch than to PAETEC's own switch, PAETEC bears a significantly greater portion of the transport burden than a typical CLEC.

[6] Even in the end user situation, the imposition of switched access charges on the "open end" of an FX-like service is unnecessary and anachronistic, and contrary to the *de facto* treatment of such calls among LECs today.

[7] *See* PAETEC's September 7, 2004, *ex parte* filing in these dockets. This was highlighted in *Starnet, Inc., v. Global NAPS, Inc.,* 355 F.3d 634 (7th Cir. 2004), in which the court noted the blurring of the distinction between "service provider portability" and "location portability" when service to an ISP modem pool is concerned.